

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)
)
 v.) CRIMINAL No. 04-10048-NG
)
 RICARDO ROSARIO)

**GOVERNMENT'S EMERGENCY MOTION TO COMPEL TESTING RESULTS AND OTHER
DOCUMENTS AND DATA UTILIZED IN EXPERT REPORT**

In yesterday's mail, the undersigned received an affidavit from Dr. Paul A. Spiers regarding Ricardo Rosario. It is based on testing apparently done last August. The report is dated March 6, 2006. Although the government was aware that Dr. Spiers had examined the defendant (because counsel so advised the government months ago), it is not clear what the purpose of the report is because Rosario's sentencing memorandum has not yet been filed.

The government has requested the documents on which the report is based, including certain test results. The fact of the tests is referenced in the report. The results are also selectively referenced. The government would like the actual tests so that it can see the results in all of them. The decedent has refused to produce these documents, because Dr. Spiers believes that for him to do so would "violate copyright agreements and the professional standards." May 1, 2006 email from defense counsel refusing to produce the requested information at Dr. Spiers direction. Dr. Spiers has produced

notes that he took during his interview of the defendant last August.

The defendant can't have it both ways. It can't rely on opinions and test results at sentencing while simultaneously denying the government the right to see the raw data on which they are based. Dr. Spiers has not been retained to treat the defendant. He has been retained by counsel to offer opinions relevant to some sentencing issues. The government respectfully suggests that he should not be allowed to do so unless the government is allowed to see the data on which those opinions are based.

Based on the foregoing the government requests that Dr. Spiers be ordered to produce all test results and any other data or documents on which he relied in reaching the opinions expressed in his March 6, 2006 report.

Respectfully submitted,
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